

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9762
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a fifty-one-year-old man with an eighth-grade education. His only recent work history (within the last fifteen years) is a laborer's job he held for two weeks at a plywood factory.

The petitioner has a plethora of health problems including chest pain, shortness of breath (C.O.P.D.), numbness and cramping in his arms and legs, back pain, and occasional abdominal pain. The above problems were noted by a consulting physician in December, 1989. Although medical treatment has been sparse and sporadic, the problems appear to be long-standing. A pulmonary function test performed in December, 1989, noted "moderate chest restriction" that was not improved by bronchodilators despite "good patient effort".

In May, 1990, the petitioner's treating physician noted, on a department general assistance medical report

form, that the petitioner would be disabled for one year.

The report included the following comments:

Pain left chest, shortness of breath on exertion, walking, etc. There is extensive chronic pleuritic disease left chest which disables him from any exertion, working, etc.

. . .

The least amount of exertion causes shortness of breath. This man needs a pulmonary work-up to determine case of this pleuritic disease (pulmonary functions, etc).

The above assessments are uncontroverted by any other evidence of record. Based on the above, it is found that the petitioner, for many years, has been unable to engage in any work that entails significant amounts of lifting, walking, and other--even moderate--physical activity. This would preclude the performance of all but "sedentary work" (see infra).

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In addition to the above, the regulations provide that an individual of the petitioner's age, education, and work experience who is limited to "sedentary work" (as defined by 20 C.F.R. § 416.967(a)) must be considered disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.09. Since the evidence clearly establishes that the petitioner is so limited, the Department's decision is reversed.

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